

ICPS newsletter®

Self-regulation in the construction industry to prevent Elita Center-style scams

The International Centre for Policy Studies (ICPS) and the Ukrainian Construction Association (UCA) continued their series of roundtables with the third one called "Self-regulation in the Construction Industry to Prevent Developer Scams like Elita Center" on 22 October 2007. The goal of these roundtables is to draw on all stakeholders to develop proposals to tackle those problems that hinder the development of a proper housing market in Ukraine. During this discussion, which brought together representatives of government, business and media, the UCA presented its own legislative initiatives regarding self-regulation of builders' organizations

Self-regulation is the answer to current challenges

At the moment, Ukraine's builders are facing many problems that hinder the sector's normal development. There is also a growing threat of man-made catastrophes. In turn, this threat is the result of a decline in the quality of building construction and maintenance. The absence of effective mechanisms to hold market participants liable for fulfilling obligations has resulted in the emergence of unscrupulous companies on the market. The rising number of scams against consumers is having a negative impact on the building sector as a whole and on government agencies in particular.

According to the Ukrainian Construction Association, self-regulation in the building sector could provide an answer to the current challenges. Along with state regulation, the construction sector needs to switch to regulation by self-regulating organizations, says UCA Chairman of the Board Lev Partskhaladze. He is convinced that such a switch would make it possible to institute feedback mechanisms between the business community and state bodies on issues of ascertaining rights and overseeing the industry.

What does self-regulation add to state regulation?

Self-regulation is a voluntary agreement among entities to regulate specific aspects of their activity at their own expense. In the building sector, it is customary to call "self-regulating" those associations of construction entities that have been

granted their status according to the law and wield the authority to regulate and oversee construction activity. According to Verkhovna Rada Deputy of the 5th convocation Ksenia Liapina, one of the main functions of self-regulation is to take over that part of state regulation that is often the most expensive part.

Among the main advantages of self-regulation, the UCA singled out these six:

- self-regulated rules and standards are more flexible than those established by the state;
- market participants (members of self-regulating organizations) have more legal opportunities to influence rule-making activity and the policies of self-regulating organizations than state policies;
- the application of administrative and economic penalties to members of a self-regulating organization creates less estrangement among market participants than penalties imposed by the state;
- the mechanisms that are formed by self-regulating organizations for out-of-court settlement of disputes between consumers and producers of goods and services are, as a rule, less expensive and take less time than taking a dispute to court. Procedures for settling disputes among market participants are better adjusted to the environment in a specific area of activity than traditional court procedures;
- the state saves tax hryvnia if certain functions of government bodies are delegated to self-regulating bodies,

as they are financed by the relevant businesses themselves;

- since self-regulating organizations, on one hand, represent the interests of their members to the state and, on the other, are qualified agents of state and public interests among professional participants, it is possible to see the process of allying the interests of all market operators with interests of the state.

At this roundtable, participants emphasized that the advantages of self-regulation have been recognized by both the private and public sector long ago. Self-regulating guilds emerged simultaneously with towns and were legally established before the 13th–16th centuries as the first such example, ICPS Director Volodymyr Nikitin noted in his presentation. During the construction boom in the 19th century, self-regulating organizations also successfully fulfilled the functions delegated to them, he said.

Russian Construction Association representative Aleksandr Gerasimov drew attention to the fact that the culture of self-regulation was totally destroyed by the Soviet Union. So, Ukraine is not the only country faced with the task of reviving self-regulating organizations.

Self-regulating organizations must be backed by legislation

However, as Ksenia Liapina aptly mentioned in her presentation, without legislative backing, there can be no self-regulation in the construction industry. At the moment, Ukraine lacks legislation that clearly identifies the status of self-regulating organizations. Nor has the country formulated an overall concept of self-regulating organizations or specified the common features of self-regulating organizations that distinguish them from other non-commercial organizations.

At this roundtable, UCA expert Tetiana Kravtsova presented the proposals of the Ukrainian Construction Association regarding legislative regulation of the activity of self-regulating organizations in

the construction sector. The UCA proposes identifying the main objectives of self-regulating organizations as:

- to interact with government bodies, local governments and their members' customers;
- to ensure the adherence of its members to the requirements of Ukrainian legislation, rules and standards regarding construction activity;
- to support rights and lawful interests of its members.

According to the UCA proposals, members of a self-regulating builders' organization can be legal entities and private individuals who are sole proprietors engaged in construction activity and who meet the requirements of the Ukrainian legislation and the statutory requirements of a self-regulating organization. A specially authorized central executive body in the area of construction, architecture and urban planning should keep the state register of self-regulating organizations of builders.

Among the main rights of self-regulating organizations, the UCA emphasized:

- the right to represent the interests of its members in government and local government bodies without power of attorney;
- to have any regulations of government bodies and local governments or actions by their officials that violate the rights and lawful interests of members of the self-regulating organization recognized as illegal through the courts;

- to participate in the drafting of laws and other regulations and legislation and also state programs related to construction activity.

UCA specialists say that the eventual bill must specify these four key obligations of self-regulating organizations:

- to adhere to Ukrainian law;
- to form a compensatory fund to cover the liability of its members before their customers and third parties;
- to oversee how members adhere to Ukrainian law, standards for the particular activity, and the rules of business and professional ethics;
- to maintain discipline as established by law and the internal documents of the self-regulating organization in relation to members.

No effective alternative to self-regulation

The majority of participants in the roundtable agreed that the initiators of the debate were undertaking a difficult, but very useful and urgent matter. RCA's Mr. Gerasimov emphasized that there was no other way out, except to self-regulate. He also said that it was very important that the initiators take their proposals not only to their logical legislative conclusion, but also to the actual functioning of self-regulating organizations.

Self-regulation is one of top rungs on the ladder to a normal market. If market participants understand that it is necessary

By the way...

On 26 October, a roundtable called "The impact and prospects of a Free Trade Agreement between Ukraine and the European Union" was held in Dnipropetrovsk as part of the "EU-Ukraine FTA: Analytical, methodological and informational support for negotiations" project. Participants discussed the possibility of setting up a free trade area between Ukraine and the European Union and the possible impact on the economy as a whole and various sectors in particular.

Over 25–26 October, ICPS Director Volodymyr Nikitin attended an international seminar called "The Cultural Landscape of the Regions" in L'viv.

to join forces to improve regulatory norms and rules, if they are themselves interested in the discipline, cleanness and lawfulness of actions of their members, this is evidence of a high level of awareness among these market participants. According to Volodymyr Nikitin, self-regulation is the way for civil society to do business.

The Ukrainian Construction Association represents more than 100 organizations operating on Ukraine's property market. The UCA and ICPS held the first roundtable called "How to lower housing prices: The law on public debate" on 16 March 2007 and the second debate called "Simplifying permits is one step to less corruption and lower housing prices" on 22 May 2007. For additional information, contact ICPS Director Volodymyr Nikitin by telephone at (380-44) 484-4400 or via e-mail at: vnikitin@icps.kiev.ua.

What kind of law does Ukraine need to fight gender discrimination?—a roundtable

On 15 October, ICPS and the Center for Ukrainian Reform Education (CURE) organized a roundtable called "What kind of law does Ukraine need to fight gender discrimination?" The goal of this event was to present the concept of a Bill "On protection against sexual discrimination" and to elicit the opinions of stakeholders regarding this draft.

During this roundtable, ICPS expert Oleksandr Tatarevskiy made a presentation called "The concept of a future law to fight gender discrimination." Mr. Tatarevskiy outlined the main drawbacks of the current system for protecting individuals against discrimination and familiarized participants with the main provisions of the Bill.

This draft proposes transferring additional functions and powers related to fighting gender discrimination to a specially-authorized central executive body tasked with ensuring equal rights and opportunities for women and men. The key functions that this body must fulfill include: examining complaints about discrimination and holding enquiries related to these complaints, providing legal assistance to victims of discrimination, seeking pathways to reconciliation, and enforcing anti-discrimination legislation.

The experts who participated in this roundtable emphasized a need to more clearly specify the focus of the concept and the purpose of the Bill itself. Participating experts approved the idea of an anti-discrimination body. At the same time, Liubomyr Chorniy, who represented a community organization called the Center for Public Scrutiny, warned that such an anti-discrimination body could inadvertently offer opportunities for corruption.

Family, Young and Sports Ministry and the UNDP Equal Opportunities Program expert Tamara Melnyk noted that the presented Bill needed to supplement other laws on gender issues, in particular the Law "On ensuring equal rights and opportunities for women and men." Ms. Melnyk also mentioned that the word "victim" should probably be replaced by the word "sufferer" in this draft. UNDP Equal Opportunities Program Project Manager Larysa Kobelyanska emphasized the importance of the informational component in the process of developing this Bill.

This roundtable is part of a series of debates organized under the "Policy Campaign for Promoting Gender Equality in Ukraine" project. The goal of this project is to develop legislative initiatives aimed at resolving urgent issues of gender equality.

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